

FILED

08 OCT 14 PM 2:56

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY *Dee* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

July 2007 Grand Jury

UNITED STATES OF AMERICA,	)	Criminal Case No. <u>06CR0043-BEN</u>
)	
Plaintiff,	)	<u>I N D I C T M E N T</u>
	)	(Superseding)
v.)	
	)	Title 18, U.S.C., Sec. 371 -
RONALD SAATHOFF (1),	)	Conspiracy to Commit Mail and
CATHY LEXIN (2),	)	Wire Fraud; Title 18, U.S.C.,
TERESA WEBSTER (3),	)	Secs. 1343 and 1346 - Wire
LAWRENCE GRISSOM (4),	)	Fraud; Title 18, U.S.C.,
LORAIN CHAPIN (5),	)	Secs. 1341 and 1346 - Mail Fraud;
	)	Title 18, U.S.C., Sec. 2 -
Defendants.	)	Aiding and Abetting

The grand jury charges:

INTRODUCTORY ALLEGATIONS

At all times relevant to this Indictment:

The San Diego City Employees' Retirement System

1. The San Diego City Employees' Retirement System (hereinafter "SDCERS") administered the funds used to provide retirement, health insurance, disability and death benefits to current, former, and retired city employees and their beneficiaries. The City of San Diego (hereinafter "the City") was SDCERS' plan sponsor. As the plan sponsor, the City was responsible for negotiating and granting benefits, and providing SDCERS with sufficient funds to pay for these

JBO:nlv(1):San Diego
10/14/08

1 benefits, which included the retirement, health insurance, disability,
2 and death benefits for current, former, and retired city employees and
3 their beneficiaries.

4 2. With the assistance of an outside actuary, SDCERS determined
5 how much the City needed to pay each year to ensure that SDCERS had
6 sufficient funds to pay for the retirement, health insurance,
7 disability, and death benefits of the City's current, former, and
8 retired employees. The outside actuary also calculated SDCERS'
9 funding ratio on an annual basis. SDCERS' funding ratio was the ratio
10 between its assets and liabilities. A funding ratio of less than 100%
11 meant that SDCERS did not have sufficient assets to cover its
12 liabilities.

13 3. Until its reorganization in April 2005, a Board of
14 Administration (hereinafter "SDCERS Board") with 13 trustees governed
15 the administration of SDCERS' funds. The SDCERS Board included four
16 private citizen trustees appointed by the City Council, three city
17 officials serving as ex-officio trustees, one trustee elected by city
18 firefighters, one trustee elected by city police officers, three
19 trustees elected by city general employees, and one trustee elected
20 by retired city employees. The SDCERS Board had to approve by
21 majority vote any city proposal that would change the City's
22 contribution requirements to SDCERS.

23 4. Each trustee of the SDCERS Board had a fiduciary duty to the
24 Board, the members of SDCERS, and the public. The primary fiduciary
25 duty of the SDCERS Board Trustees was to ensure that SDCERS had
26 sufficient funds to pay for the retirement, health insurance,
27 disability, and death benefits of the City's current, former, and
28 retired employees. This fiduciary duty required each SDCERS Board

1 Trustee to disclose all material information to their fellow SDCERS
2 Board Trustees, including all information about (a) proposals that
3 could affect the funding of SDCERS and its funding ratio, (b) whether
4 an SDCERS Board decision could impact the financial interests of an
5 SDCERS Board Trustee, (c) any increases in retirement benefits, (d)
6 the fiscal health of SDCERS and its funding ratio, and (e) whether an
7 SDCERS Board Trustee had a conflict of interest.

8 5. Consistent with this fiduciary duty, the SDCERS Board
9 enacted its "Rules of the Retirement Board of Administration."
10 According to these Rules, each SDCERS Board Trustee had a fiduciary
11 duty to "avoid any activity which may be interpreted as a conflict of
12 interest," to "conduct all SDCERS business responsibilities in a fair
13 manner and be honest in all business negotiations," and to
14 "communicate to an appropriate Board or staff member information on
15 actions that may be violations of the law, [the Rules of the
16 Retirement Board of Administration], or actions which may be conflicts
17 of interest." The Rules of the Retirement Board of Administration
18 also prohibited each SDCERS Board Trustee from "directly or indirectly
19 seek[ing] or accept[ing] gifts, money or property that would influence
20 or appear to influence the conduct of his or her duties" and from
21 "knowingly engag[ing] in any serial, rotating, or seriatim meeting
22 through which a quorum of the Board becomes involved in the
23 acquisition of information or deliberation of any issue, unless the
24 notice and public access provisions of the open meeting laws are
25 satisfied."

26 //

27 //

28 //

1 6. Defendant RONALD SAATHOFF (hereinafter "defendant SAATHOFF")
2 was an SDCERS Board Trustee from the 1980s until 2005 as the
3 firefighters' representative, and was subject to the fiduciary duties
4 described above. Defendant SAATHOFF also was president of Local 145,
5 the firefighters' labor union, and was the lead negotiator for Local
6 145 during the 2002 labor negotiations with the City.

7 7. Defendant CATHY LEXIN (hereinafter "defendant LEXIN") was
8 an ex-officio SDCERS Board Trustee from 2001 until 2004, and was
9 subject to the fiduciary duties described above. Defendant LEXIN also
10 was the City's Human Resources Director, and was the City's lead labor
11 negotiator with Local 145 and defendant SAATHOFF during the 2002 labor
12 negotiations.

13 8. Defendant TERESA WEBSTER (hereinafter "defendant WEBSTER")
14 was an ex-officio SDCERS Board Trustee from 1995 until 2005, and was
15 subject to the fiduciary duties described above. Defendant WEBSTER
16 also was the City's Assistant Auditor and Comptroller, and later
17 became the City's acting Auditor and Comptroller.

18 9. The Administration Division of SDCERS managed the daily
19 affairs of SDCERS and directly interacted with the SDCERS Board.
20 Defendant LAWRENCE GRISSOM (hereinafter "defendant GRISSOM") was the
21 Administrator of SDCERS and in charge of its Administration Division
22 from 1987 until 2005. According to the Rules of the Retirement Board
23 of Administration, defendant GRISSOM was to "be solely responsible to
24 the Board." As the Administrator of SDCERS, defendant GRISSOM had the
25 fiduciary duty to keep the SDCERS Board Trustees and members of SDCERS
26 fully informed of all material information, including all information
27 about (a) proposals that could affect the funding of SDCERS and its
28 funding ratio, (b) whether an SDCERS Board decision could impact the

1 financial interests of an SDCERS Board Trustee, (c) any increases in
2 retirement benefits, (d) the fiscal health of SDCERS and its funding
3 ratio, and (e) whether an SDCERS Board Trustee had a conflict of
4 interest.

5 10. The Legal Services Division of SDCERS had the duty to
6 provide legal advice and assistance to the SDCERS Board. Defendant
7 LORAINÉ CHAPIN (hereinafter "defendant CHAPIN") was the General
8 Counsel of SDCERS and in charge of its Legal Services Division from
9 1997 until 2006. As the General Counsel of SDCERS, defendant CHAPIN
10 had the fiduciary duty to keep the SDCERS Board Trustees and members
11 of SDCERS fully informed of all material information, including all
12 information about (a) proposals that could affect the funding of
13 SDCERS and its funding ratio, (b) whether an SDCERS Board decision
14 could impact the financial interests of an SDCERS Board Trustee, (c)
15 any increases in retirement benefits, (d) the fiscal health of SDCERS
16 and its funding ratio, and (e) whether an SDCERS Board Trustee had a
17 conflict of interest.

18 Manager's Proposals 1 and 2, and the 2002 Labor Negotiations

19 11. In 1996, the City and the SDCERS Board entered into an
20 agreement called "Manager's Proposal 1" (hereinafter "MP1"). Under
21 MP1, the SDCERS Board agreed to permit the City to underfund SDCERS
22 by paying less than the actuarially recommended amount of money
23 necessary to ensure a funding ratio of 100%. If the funding ratio
24 fell below 82.3%, then a "trigger" would be hit, and the City would
25 be required to pay to SDCERS an imminent multi-million dollar balloon
26 payment. Under one interpretation of MP1, the City would have been
27 required to restore the funding ratio to 82.3%, requiring the City to
28 pay approximately \$25 million for each percentage point that the

1 funding ratio fell below 82.3%. If the funding ratio fell below 78%,
2 the City would have faced a balloon payment of more than \$100 million.

3 12. In 2002, the City was scheduled to negotiate city employee
4 benefits with four labor unions: Local 145 (the firefighters' union),
5 the Police Officers' Association, Local 127 (blue collar city
6 employees), and the Municipal Employees Association (white collar city
7 employees). The blue collar city employees and white collar city
8 employees were commonly called the "general members." These labor
9 negotiations were commonly called "meet and confer." The four labor
10 unions wanted increased retirement benefits. The general members'
11 labor negotiators wanted the City to increase the general members'
12 retirement multiplier from 2.25% to 2.5%. This increase from 2.25%
13 to 2.5% would have raised the yearly retirement for defendants LEXIN,
14 WEBSTER, GRISSOM, and CHAPIN by thousands of dollars each year.
15 Defendants LEXIN and WEBSTER helped formulate the City's negotiating
16 strategy.

17 13. An issue in the Local 145 negotiations was whether the
18 firefighters would receive certain benefits, including whether
19 defendant SAATHOFF would receive the "presidential leave retirement
20 benefit." The presidential leave retirement benefit would permit
21 defendant SAATHOFF to base his retirement calculation on the
22 combination of his fire captain salary and his union president salary.
23 Without the presidential leave retirement benefit, defendant
24 SAATHOFF's retirement benefit would have been based solely on his fire
25 captain salary. With the presidential leave retirement benefit,
26 defendant SAATHOFF's retirement would have increased by more than
27 \$25,000 per year.

28 //

1 14. In 2002, the City and some of the labor unions reached
2 tentative labor agreements to grant numerous retirement benefit
3 increases to some of the labor unions, including increasing the
4 general members' retirement benefit multiplier from 2.25% to 2.5% and
5 giving defendant SAATHOFF the presidential leave retirement benefit.
6 If enacted, these increased benefits would have raised the retirement
7 benefits for defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN.
8 The tentative increased retirement benefits were made "contingent" on
9 the SDCERS Board agreeing to modify MP1 so the City would avoid making
10 the imminent required multi-million dollar balloon payment if SDCERS'
11 funding ratio fell below 82.3%. If the SDCERS Board did not agree to
12 modify MP1, then the City would not be required to implement the
13 increased retirement benefits, including the 2.25% to 2.5% increase
14 and the presidential leave retirement benefit. If MP1 had remained
15 unchanged, defendant SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN
16 would have lost thousands of dollars each year in increased retirement
17 benefits. The proposal to modify MP1 and to make increased retirement
18 benefits contingent upon that modification became known as "Manager's
19 Proposal 2" (hereinafter "MP2").

20 15. In 2002, the City presented the SDCERS Board with multiple
21 versions of MP2, each of which would have modified MP1's trigger so
22 the City would only have paid the "full actuarial rate" (estimated at
23 a total of between \$25 and \$40 million) phased in over a series of
24 years if the funding ratio fell below the trigger, rather than the
25 imminent multi-million dollar balloon payment that could have exceeded
26 \$100 million if MP1 remained unmodified. In these versions of MP2,
27 the City also proposed lowering the MP1 trigger from 82.3% to 75%.
28 //

1 16. On or about Friday, June 21, 2002, the SDCERS Board met and
2 reviewed a version of MP2. Defendant GRISSOM told the SDCERS Board
3 Trustees that the recently negotiated retirement benefits were
4 contingent upon the SDCERS Board agreeing to adopt MP2. At this
5 meeting, the City Manager's Office proposed reducing the MP1 trigger
6 from 82.3% to 75%. At this meeting, defendant SAATHOFF reviewed the
7 text of MP1 and stated that MP1 "could be very easily interpreted" to
8 require the City to pay SDCERS the funds necessary to restore SDCERS'
9 funding ratio to 82.3% if the funding ratio fell below 82.3%. Under
10 defendant SAATHOFF's June 21, 2002 interpretation of MP1, the City
11 would be required to make an imminent balloon payment, possibly
12 exceeding \$100 million, if the trigger were hit. After extensive
13 discussion, the SDCERS Board did not reach a decision on the City's
14 proposal, and agreed to revisit the issue in July 2002.

15 17. On or about Monday, June 24, 2002, defendant SAATHOFF met
16 with defendant GRISSOM for several hours and discussed the status of
17 his presidential leave retirement benefit. After the meeting,
18 defendant GRISSOM sent an e-mail to defendant LEXIN, and asked about
19 the status of the presidential leave retirement benefit. In response,
20 defendant LEXIN sent an e-mail to defendant GRISSOM: "we agreed to
21 'presidential leave' subject to attorneys working out the bugs, Ron
22 knows (as recently as discussions today) that the attorneys and
23 auditors are working with Dan on language . . . not yet in place. .
24 . . . TELL RON TO COOL HIS JETS."

25 18. On or about July 1, 2002, defendant LEXIN drafted a
26 memorandum for the SDCERS Board Trustees about MP2 which she shared
27 with defendants WEBSTER and GRISSOM, and others. The memorandum,
28 written in the name of a Deputy City Manager, stated that the recently

1 negotiated retirement benefits were "contingent" upon the SDCERS
2 Board's modification of MP1 and its trigger. After receiving edits
3 and suggestions from defendants WEBSTER and GRISSOM, and others,
4 defendant LEXIN caused the memorandum to be sent by e-mail to the
5 SDCERS Board Trustees on or about July 8, 2002.

6 19. On or about July 9, 2002, defendant LEXIN briefed the City
7 Council in a closed session meeting. Defendant LEXIN informed the
8 City Council that the SDCERS Board might not adopt MP2 with a
9 75% trigger. She also informed the City Council that, according to
10 defendant GRISSOM, on July 11, 2002, an SDCERS Board Trustee would
11 make an alternate motion to maintain the trigger at 82.3%, but "phase-
12 in" the "full actuarial rates" over a series of years. Under this
13 alternate proposal, "the practical impact on the City would be no
14 different than the previously authorized" 75% MP2 proposal. Based on
15 defendant LEXIN's recommendation, the City Council agreed to accept
16 the alternate proposal, but only as a "backup" if the SDCERS Board
17 refused to adopt the 75% MP2.

18 20. On or about July 11, 2002, the SDCERS Board met again to
19 consider MP2. Defendant GRISSOM reminded the SDCERS Board Trustees
20 that the recently negotiated benefit enhancements were contingent on
21 the SDCERS Board agreeing to modify MP1 by approving MP2. At the
22 meeting, the City Manager's Office continued to propose a version of
23 MP2 which would reduce the trigger from 82.3% to 75%. After extensive
24 discussion about the 75% MP2 proposal, defendant SAATHOFF made a
25 motion to "amend" the City's MP2 proposal (hereinafter "SAATHOFF's MP2
26 proposal"). Under defendant SAATHOFF's MP2 proposal, the 82.3%
27 trigger would remain in place. However, if the funding ratio fell
28 below 82.3%, the City's balloon payment would be "phased in" over a

1 series of years, and would be limited to the "full actuarial rate,"
2 which was far less than the over \$100 million payment that could have
3 been required if MP1 remained unchanged. Defendant SAATHOFF's motion
4 to amend MP2 was the alternate proposal that defendant LEXIN had
5 described during the July 9, 2002 City Council closed session meeting.
6 After limited discussion, the SDCERS Board Trustees voted 8-2, with
7 one abstention and two Trustees absent, to approve defendant
8 SAATHOFF's MP2 proposal, subject to further review by SDCERS' outside
9 fiduciary counsel and actuary.

10 21. Shortly after the July 11, 2002 vote, defendants LEXIN,
11 WEBSTER, GRISSOM, and CHAPIN, and others, took the steps to create the
12 legislation and other documents necessary to implement defendant
13 SAATHOFF's MP2 proposal and the contingent retirement benefits
14 negotiated in 2002, including defendant SAATHOFF's presidential leave
15 retirement benefit, which later became Resolution 297212.

16 22. On or about October 21, 2002, the City Council adopted
17 Resolution 297212 on its consent agenda without public comment.
18 Resolution 297212 gave defendant SAATHOFF the presidential leave
19 retirement benefit.

20 23. On or about November 15, 2002, the SDCERS Board formally
21 approved defendant SAATHOFF's MP2 proposal by a 10-2 vote. During the
22 meeting, defendant SAATHOFF stated that his July 11, 2002 MP2 proposal
23 was an "off-the-seat-of-the-pants" motion.

24 24. On or about November 18, 2002, the City Council heard public
25 comment in favor of and against the ordinances necessary to put into
26 effect defendant SAATHOFF's MP2 proposal, as well as the increased
27 retirement benefits that were contingent on the SDCERS Board adopting
28 MP2. After hearing the arguments of defendants SAATHOFF and LEXIN in

1 favor of defendant SAATHOFF's MP2 proposal, and others, the City
2 Council approved the ordinances necessary to implement the retirement
3 benefits contingent on defendant SAATHOFF's MP2 proposal.

4 Count 1

5 18 U.S.C. § 371

6 The Conspiracy

7 25. The allegations set forth in paragraphs 1 through 24 above
8 are realleged as if fully set forth herein.

9 26. Beginning in or before January 2001, and continuing up to
10 and including January 6, 2006, within the Southern District of
11 California, and elsewhere, defendants SAATHOFF, LEXIN, WEBSTER,
12 GRISSOM, and CHAPIN did knowingly conspire with each other and others
13 known and unknown to the grand jury to commit offenses against the
14 United States, that is, mail and wire fraud, by conspiring and
15 agreeing to devise a material scheme and artifice to defraud,
16 including to deprive the SDCERS Board Trustees, members of SDCERS, and
17 the citizens of the City of San Diego of their intangible right of
18 honest services of their public officials to be performed free from
19 corruption, fraud, undue influence, conflict of interest, and deceit,
20 and, with the intent to defraud, to obtain money and property by means
21 of materially false and fraudulent pretenses, representations, and
22 promises, and the intentional concealment, failure to disclose, and
23 omission of material facts, and in executing said scheme, deposited
24 and caused to be deposited matters and things to be sent and delivered
25 by the United States Postal Service and private and commercial
26 interstate carriers, and caused matters and things to be delivered by
27 the United States Postal Service and private and commercial interstate
28 carriers according to the direction thereon, and caused writings,

1 signs, signals, and sounds to be transmitted by means of wire in
2 interstate commerce; in violation of Title 18, United States Code,
3 Sections 1341, 1343, and 1346.

4 Manners And Means

5 27. In furtherance of this conspiracy, and to effect the objects
6 thereof, the defendants utilized the following manners and means,
7 among others:

8 a. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and
9 CHAPIN, and others, fraudulently devised a plan to modify MP1 and its
10 trigger in sufficient time so the City would avoid making the imminent
11 multi-million dollar balloon payment to SDCERS that MP1 required, and
12 so they could increase their own personal retirement benefits and
13 salaries, including defendant SAATHOFF's presidential leave retirement
14 benefit, and so defendants LEXIN, WEBSTER, GRISSOM, and CHAPIN could
15 maintain their positions within the City of San Diego and SDCERS, and
16 seek new employment opportunities.

17 b. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and
18 CHAPIN, and others, fraudulently agreed to obtain the presidential
19 leave retirement benefit for defendant SAATHOFF in exchange for his
20 support of a proposal to modify MP1 so the City would avoid the
21 imminent multi-million dollar balloon payment that it owed SDCERS
22 under MP1, and so they could increase their own personal retirement
23 benefits and salaries, including defendant SAATHOFF's presidential
24 leave retirement benefit, and so defendants LEXIN, WEBSTER, GRISSOM,
25 and CHAPIN could maintain their positions within the City of San Diego
26 and SDCERS, and seek new employment opportunities.

27 c. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, CHAPIN,
28 and others, negotiated, reviewed, and agreed to accept increased

1 retirement benefits, including defendant SAATHOFF's requested
2 presidential leave retirement benefit and the increase in the
3 retirement multiplier from 2.25% to 2.5% for general members, in
4 exchange for their support of a proposal to modify MP1 so the City
5 would avoid the multi-million dollar balloon payment that it owed
6 SDCERS under MP1, and so they could increase their own personal
7 retirement benefits and salaries, including defendant SAATHOFF's
8 presidential leave retirement benefit, and so defendants LEXIN,
9 WEBSTER, GRISSOM, and CHAPIN could maintain their positions within the
10 City of San Diego and SDCERS, and seek new employment opportunities.

11 d. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and
12 CHAPIN, and others, made material misrepresentations about the
13 increased retirement benefits to and fraudulently concealed material
14 information about the increased retirement benefits from the SDCERS
15 Board Trustees, members of SDCERS, and citizens of the City of San
16 Diego, so that MP1, its trigger, and its balloon payment would be
17 modified, and so they could increase their own personal retirement
18 benefits and salaries, including defendant SAATHOFF's presidential
19 leave retirement benefit, and so defendants LEXIN, WEBSTER, GRISSOM,
20 and CHAPIN could maintain their positions within the City of San Diego
21 and SDCERS, and seek new employment opportunities. These material
22 misstatements and acts of concealment concerned, among other things:
23 (i) the nature and existence of defendant SAATHOFF's presidential
24 leave retirement benefit, (ii) the nature and existence of Local 145's
25 proposal to convert annual leave into service credit and to use annual
26 leave to extend an individual's "DROP" participation period, (iii)
27 defendant SAATHOFF's purchase of service credits that enhanced
28 defendant SAATHOFF's retirement benefits, and (iv) the exception to

1 the "90% cap" on one's "high year" calculation, and how it applied to
2 defendant WEBSTER.

3 e. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and
4 CHAPIN, and others, made material misrepresentations about MP1 to and
5 fraudulently concealed material information about MP1 from the SDCERS
6 Board Trustees, members of SDCERS, and citizens of the City of San
7 Diego, so that MP1, its trigger, and its balloon payment would be
8 modified, and so they could increase their own personal retirement
9 benefits and salaries, including defendant SAATHOFF's presidential
10 leave retirement benefit, and so defendants LEXIN, WEBSTER, GRISSOM,
11 and CHAPIN could maintain their positions within the City of San Diego
12 and SDCERS, and seek new employment opportunities. These material
13 misstatements and acts of concealment concerned, among other things:
14 that MP1's trigger required the City to restore SDCERS' funding ratio
15 to at least 82.3% if the SDCERS' funding ratio fell below 82.3%
16 (resulting in a balloon payment of over \$100 million), rather than the
17 \$25-40 million figure that defendants used.

18 f. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and
19 CHAPIN, and others, made misrepresentations about the fiscal health
20 of SDCERS and the City of San Diego to and fraudulently concealed
21 material information about the fiscal health of SDCERS and the City
22 of San Diego from the SDCERS Board Trustees, members of SDCERS, and
23 citizens of the City of San Diego, so that MP1, its trigger, and its
24 balloon payment would be modified, and so they could increase their
25 own personal retirement benefits and salaries, including defendant
26 SAATHOFF's presidential leave retirement benefit, and so defendants
27 LEXIN, WEBSTER, GRISSOM, and CHAPIN could maintain their positions
28 within the City of San Diego and SDCERS, and seek new employment

1 opportunities. These material misstatements and acts of concealment
2 concerned, among other things: (i) information concerning SDCERS'
3 declining funding ratio, including that SDCERS' funding ratio was
4 below 82.3%, and (ii) that financial ratings agencies were not aware
5 of the severity of SDCERS' fiscal problems, despite defendant
6 WEBSTER's assurances to the SDCERS Board Trustees that rating agencies
7 had "independently evaluated" and blessed the City's financial health.

8 g. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and
9 CHAPIN, and others, made material misrepresentations about MP2 and its
10 enactment to and fraudulently concealed material information about MP2
11 and its enactment from the SDCERS Board Trustees, members of SDCERS,
12 and citizens of the City of San Diego, so that MP1, its trigger, and
13 its balloon payment would be modified, and so they could increase
14 their own personal retirement benefits and salaries, including
15 defendant SAATHOFF's presidential leave retirement benefit, and so
16 defendants LEXIN, WEBSTER, GRISSOM, and CHAPIN could maintain their
17 positions within the City of San Diego and SDCERS, and seek new
18 employment opportunities. These material misstatements and acts of
19 concealment concerned, among other things: (i) that defendant
20 Saathoff's "motion" to amend MP2 was not "off-the-seat-of-the-pants"
21 but prearranged, (ii) that the City Council had approved defendant
22 SAATHOFF's motion as a "backup plan" before the July 11, 2002 SDCERS
23 vote, (iii) that defendant Lexin had breached her fiduciary duty and
24 had a conflict of interest because she had negotiated, drafted, and
25 lobbied for MP2 on behalf of the City and then sat on the SDCERS Board
26 when it considered whether to adopt MP2, (iv) that outside counsel and
27 the outside actuary were pressured into changing their views on MP2,
28 (v) that outside counsel and the outside actuary never knew about

1 defendant SAATHOFF's presidential leave retirement benefit until long
2 after MP2 was enacted, (vi) that outside counsel actually wrote the
3 outside actuary's letter analyzing MP2, (vii) that defendant GRISSOM
4 thought there was little justification for MP2, and that "greed
5 happened" when MP2 was enacted, (viii) that defendants LEXIN, WEBSTER,
6 and GRISSOM participated in the ghostwriting of memoranda in the names
7 of other city officials that were sent to the SDCERS Board Trustees,
8 and (ix) that defendant CHAPIN was not "recused" from MP2.

9 h. Defendants SAATHOFF, LEXIN, and WEBSTER fraudulently
10 voted in favor of defendant SAATHOFF's MP2 proposal, and by making
11 material misrepresentations and concealing material information from
12 the other SDCERS Board Trustees, defendants SAATHOFF, LEXIN, WEBSTER,
13 GRISSOM, and CHAPIN deceived and fraudulently induced other SDCERS
14 Board Trustees to vote in favor of defendant SAATHOFF's MP2 proposal,
15 which would allow the City to avoid the imminent multi-million dollar
16 balloon payment that it owed SDCERS, and so they could increase their
17 own personal retirement benefits and salaries, including defendant
18 SAATHOFF's presidential leave retirement benefit, and so defendants
19 LEXIN, WEBSTER, GRISSOM, and CHAPIN could maintain their positions
20 within the City of San Diego and SDCERS, and seek new employment
21 opportunities.

22 i. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and
23 CHAPIN, and others, drafted and assisted in the drafting of
24 legislation and other documents that implemented defendant SAATHOFF's
25 MP2 proposal and the contingent retirement benefits negotiated in
26 2002, including defendant SAATHOFF's presidential leave retirement
27 benefit, and in so doing, made material misrepresentations to and
28 fraudulently concealed material information from the SDCERS Board

1 Trustees, members of SDCERS, and citizens of the City of San Diego,
2 so that MP1, its trigger, and its balloon payment would be modified,
3 and so they could increase their own personal retirement benefits and
4 salaries, including defendant SAATHOFF's presidential leave retirement
5 benefit, and so defendants LEXIN, WEBSTER, GRISSOM, and CHAPIN could
6 maintain their positions within the City of San Diego and SDCERS, and
7 seek new employment opportunities.

8 j. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and
9 CHAPIN, and others, continued to make material misrepresentations
10 about MP2 to and fraudulently conceal material information about MP2
11 from the SDCERS Board Trustees, members of SDCERS, and the citizens
12 of the City of San Diego, so that the SDCERS Board would not repeal
13 MP2. These material misstatements and acts of concealment concerned,
14 among other things: (i) the continued concealment of defendant
15 SAATHOFF's presidential leave retirement benefit, (ii) that MP2 was
16 fraudulently enacted, (iii) that SDCERS used SDCERS funds to pay
17 outside counsel to research personal legal issues for defendant
18 SAATHOFF, (iv) that defendant SAATHOFF's presidential leave retirement
19 benefit threatened to "undo" MP2, and (v) that defendant SAATHOFF's
20 presidential leave retirement benefit threatened the tax exempt status
21 of SDCERS.

22 k. By deceiving the SDCERS Board Trustees with material
23 misrepresentations and fraudulently concealing material information
24 from SDCERS Board Trustees, defendants SAATHOFF, LEXIN, WEBSTER,
25 GRISSOM, and CHAPIN caused significant harm to the financial integrity
26 of SDCERS.

27 //

28 //

OVERT ACTS

28. In furtherance of said conspiracy and to effect and accomplish the objects thereof, the following overt acts, among others, were committed within the Southern District of California, and elsewhere:

- a. On or about January 8, 2001, defendant SAATHOFF sent a letter to a city employee requesting that he receive the presidential leave retirement benefit "consistent with the current procedure followed by the P.O.A. and the M.E.A."
- b. On or about August 30, 2001, defendant LEXIN wrote a memorandum about the presidential leave retirement benefit.
- c. On or about September 6, 2001, defendant LEXIN sent an e-mail stating: "I'd like the benefit of your thoughts on the presidential leave dilimna [sic] . . . and would like to discuss other options not in the report, if you have any suggestions? when can we discuss?"
- d. On or about September 14, 2001, defendant LEXIN sent an e-mail about upcoming SDCERS Board appointments, and stated that "Ron appears concerned that he may not have control of the Board any longer with these two new appointments."
- e. On or about September 18, 2001, defendant SAATHOFF told a city labor negotiator that, as part of the presidential leave retirement benefit, he wished to combine his city salary with his union president

1 salary to increase his high one year retirement
2 calculation from \$80,881.16 to \$114,964.66.

3 f. On or about September 19, 2001, defendant WEBSTER sent
4 an e-mail to defendants LEXIN, GRISSOM, and others
5 about how to calculate defendant SAATHOFF's
6 presidential leave retirement benefit.

7 g. On or about October 5, 2001, defendant GRISSOM, in
8 response to an October 2, 2001 e-mail from defendant
9 LEXIN stating that, "PLEASE REMEMBER THAT I SHARED A
10 CLOSED SESSION/CONFIDENTIAL REPORT WITH YOU-FOR YOUR
11 EYES ONLY PLEASE," sent an e-mail stating "Thanks. I
12 was a good boy on secret stuff. . . ."

13 h. On or about October 8, 2001, defendant LEXIN arranged
14 for a meeting to discuss defendant SAATHOFF's
15 presidential leave retirement benefit.

16 i. On or about October 11, 2001, defendant WEBSTER sent
17 an e-mail to defendant LEXIN entitled "EEEEK,"
18 expressing defendant WEBSTER's concerns about SDCERS'
19 funding ratio and decreasing earnings.

20 j. On or about November 5, 2001, defendant LEXIN
21 scheduled a meeting with defendant SAATHOFF "re
22 presidential leave."

23 k. On or about November 5, 2001, defendant WEBSTER sent
24 an e-mail to a city labor negotiator discussing "Ron's
25 Plan B" and that city labor negotiators should "keep
26 the bargaining chip in your pocket."

27 l. On or about November 5, 2001, defendant WEBSTER
28 reviewed defendant SAATHOFF's presidential leave

1 retirement benefit and wrote: "If issue not brought up
2 Ron's retirement would of been based on \$80,678 now
3 115!"

4 m. On or about November 13, 2001, defendant LEXIN revised
5 a memorandum recommending that the presidential leave
6 retirement benefit be discussed in the context of the
7 2002 labor negotiations with Local 145 and the other
8 labor unions.

9 n. On or about November 13, 2001, defendant WEBSTER
10 reviewed defendant LEXIN's November 13, 2001
11 memorandum and wrote: "said another way the City would
12 be giving a \$100,000 benefit to each."

13 o. On or about December 12, 2001, defendant LEXIN revised
14 a memorandum recommending that the presidential leave
15 retirement benefit be discussed in the context of the
16 2002 labor negotiations with Local 145 and the other
17 labor unions.

18 p. On or about January 3, 2002, defendant WEBSTER sent an
19 e-mail to defendant LEXIN, and others, stating that
20 the SDCERS fund earnings from November 2000 until
21 November 2001 had decreased by 85%, and that "these
22 are SERIOUS consequences and needs attention."

23 q. On or about February 12, 2002, a city official
24 coconspirator reviewed the SDCERS June 30, 2001 Annual
25 Actuarial Valuation and wrote "What does it take to
26 remove 82% full funding trigger."

27 r. On or about February 12, 2002, defendant WEBSTER sent
28 an e-mail stating that "Per Larry the actuary report

1 shows a \$200M loss that's a \$486m swing from
2 the last report. Funding ratio drops to 90% from 97%
3 this assumes the \$100m set aside for meet and
4 confer is in assets. The trigger point is 82%. . . .
5 Ugly Ugly."

6 s. On or about February 27, 2002, defendant WEBSTER wrote
7 an e-mail to defendant LEXIN, and others, stating: "OH
8 BOY the CERS earnings for Jan is negative
9 (\$1.7) we're moving in the wrong direction!"

10 t. On or about February 28, 2002, defendant LEXIN and
11 others met and discussed how to "get rid of trigger."

12 u. On or about February 28, 2002, defendants LEXIN and
13 WEBSTER, and others, discussed via e-mail a plan "to
14 use Ron Saathoff to get" the SDCERS Board's
15 "attention."

16 v. On or about March 7, 2002, defendant GRISSOM sent an
17 e-mail to defendant WEBSTER stating that a reporter
18 had inquired about the City underfunding SDCERS, and
19 asked defendant WEBSTER "is there any 'party line' for
20 me to communicate?"

21 w. On or about March 13, 2002, defendant WEBSTER sent an
22 e-mail to defendants LEXIN and GRISSOM, and others,
23 about the SDCERS funding ratio, and stated that: "This
24 is a big and serious problem. . . . especially since
25 the \$20m+ trigger is getting closer."

26 x. On or about April 15, 2002, defendant GRISSOM sent an
27 e-mail to defendant WEBSTER estimating that the
28 funding ratio would fall below the 82.3% MP1 trigger,

1 and asked defendant WEBSTER to "[p]lease treat this as
2 confidential for the moment haven't shared
3 with any of the other Board members - yet."

4 y. On or about April 15, 2002, defendant LEXIN worked on
5 a power point presentation concerning the 2002 meet
6 and confer negotiations.

7 z. On or about April 17, 2002, defendant WEBSTER sent an
8 e-mail to defendant LEXIN, and others, stating that if
9 modifying the MP1 trigger were "tied to benefit
10 increases I think it would pass."

11 aa. On or about April 26, 2002, defendant WEBSTER sent an
12 e-mail to defendant LEXIN stating: "I recall you
13 mentioning that Larry said we'll be at a 84-86%
14 funding ratio at 6-30-02. That makes no sense! I
15 recommend not mentioning that especially on Monday
16 since we're getting different stories. I have an e-
17 mail from Larry, less than two weeks ago which
18 projected it to be at 80% on 6-30-02. . . . so it
19 makes no sense to me to now hear 84%."

20 bb. On or about April 29, 2002, defendant LEXIN worked on
21 a power point presentation concerning the 2002 meet
22 and confer negotiations, including defendant
23 SAATHOFF's presidential leave retirement benefit.

24 cc. On or about May 9, 2002, defendant WEBSTER sent an e-
25 mail to defendant LEXIN and others about shifting
26 annual leave liability from the City to the CERS fund
27 without assets to match the liability, and wrote: "the
28 proposed method would lower the funding ratio which is

1 already declining rapidly without more increases to
2 liability."

3 dd. On or about May 20, 2002, defendant GRISSOM sent an e-
4 mail to defendant WEBSTER concerning the 90% cap
5 stating, "If, after being accused of violating
6 everything and further attempting to 'pad' your own
7 benefits, you guys feel you get another bite at the
8 apple, go for it."

9 ee. On or about May 21, 2002, defendant WEBSTER sent an e-
10 mail to a city employee stating: "The Local 145 write
11 up you sent out did not state that their increased
12 offset was contingent on the Board laxing the trigger.

13 I thought ALL retirement improvements
14 (including the preside[n]tial leave(?)) were
15 contingent on the trigger. . . . especially need Ron
16 behind releasing the trigger since he runs the show at
17 CERS."

18 ff. On or about May 21, 2002, defendant WEBSTER, in
19 response to an e-mail from a city labor negotiator
20 stating "I assure you that Ron is well aware of the
21 contingent nature of the benefits, after our repeated
22 statements at the negotiations table regarding the
23 benefits being contingent upon your noted approvals.
24 Cathy was very specific on those points at every
25 discussion," sent an e-mail stating "Great."

26 gg. On or about May 31, 2002, defendant LEXIN sent an e-
27 mail to a city labor negotiator stating: "NOTHING IS
28

1 TO HAPPEN WITH PICKUPS FOR ANYONE UNTIL the SDCERS
2 vote on the trigger, right?"

3 hh. On or about June 11, 2002, defendant CHAPIN sent an e-
4 mail to outside counsel stating that an SDCERS Board
5 Trustee "raised the issue of conflict. He is very
6 concerned about the timing of the Manager's request
7 for change to the funding provisions of the 97 Mgr.
8 Proposal and the fact that the meet and confer benefit
9 increases are tied to the Board accepting the Manger's
10 new proposal."

11 ii. On or about June 13, 2002, defendant LEXIN wrote a
12 memorandum to the City Council about the presidential
13 leave retirement benefit, and the memorandum stated
14 that "Ron Saathoff, President of Local 145, had
15 requested a similar arrangement approximately one year
16 ago, and that matter became a part of these
17 negotiations as well. As a condition of reaching
18 agreement on successor MOU's, the Council approved the
19 Management Team's recommendation to allow the Union-
20 paid salary (not to exceed the salary of the Labor
21 Relations Manager as a cap) as the basis for
22 retirement benefit calculations."

23 jj. On or about June 14, 2002, defendant LEXIN wrote a
24 memorandum to the City Council stating that if the
25 SDCERS Board did not modify MP1, "the retirement
26 benefit improvements in the labor agreements with MEA,
27 Local 127, and Local 145 will not occur."

28 //

1 kk. On or about June 17, 2002, defendant WEBSTER sent an
2 e-mail to defendant LEXIN stating: "Cathy . . . Do you
3 think you need Mary's vote? I could call for you if
4 needed but since she probably won't be home from the
5 hospital until Tues at the earliest that makes
6 it pretty tight. . and tortuous . . . hopefully an
7 alternate has been picked if needed."

8 ll. On or about June 21, 2002, defendant SAATHOFF told the
9 SDCERS Board Trustees that MP1 "could be very easily
10 interpreted" to require the City to pay SDCERS the
11 funds necessary to restore SDCERS' funding ratio to
12 82.3% if funding ratio fell below 82.3%.

13 mm. On or about June 23, 2002, defendant LEXIN sent an e-
14 mail that the City's MOUs with the MEA, Local 127 and
15 Local 145 each "included benefits contingent upon" the
16 SDCERS Board agreeing to modify MP1 and its trigger.

17 nn. On or about June 25, 2002, defendant LEXIN sent an e-
18 mail to an SDCERS Board Trustee who did not attend the
19 June 21, 2002 SDCERS Board meeting, stating that
20 defendant LEXIN and others "REALLY do need you!" at
21 the July 11, 2002 SDCERS Board meeting to vote on MP2.

22 oo. On or about June 26, 2002, defendant WEBSTER sent an
23 e-mail to defendant LEXIN about Local 145's proposal
24 regarding the purchase of service credit, and wrote in
25 the e-mail that, "OK from the Board
26 perspective I presume this issue won't surface until
27 after 'the vote'? (This idea obviously goes against
28

1 what the manager is preaching and the City needs to
2 protect it's credibility now)"

3 pp. On or about June 26, 2002, defendant LEXIN sent an e-
4 mail stating: "[An SDCERS Board Trustee] sent in a 4
5 page list of questions, pretty critical sounding. . .
6 we're going to meet with Larry and come up with a plan
7 for respondig [sic] to questions, we'll get you a
8 package as soon as possible."

9 qq. On or about July 1, 2002, defendant LEXIN sent via e-
10 mail a draft memorandum to defendant GRISSOM, which
11 contained proposed answers to the questions of an
12 SDCERS Board Trustee about MP2.

13 rr. On or about July 2, 2002, defendant WEBSTER reviewed
14 defendant LEXIN's July 1, 2002 draft memorandum, and
15 sent an e-mail to a coconspirator city official
16 stating: "FYI Regarding cathy's letter my biggest
17 suggestion to her is to eliminate any reference to
18 fitch and rating agencies in #6. This letter will be
19 seen by press and the city does not need to telegraph
20 its pension problems to the rating agencies who don't
21 research the topic to any great level now."

22 ss. On or about July 8, 2002, defendants LEXIN, WEBSTER,
23 and GRISSOM caused defendant LEXIN's July 1, 2002
24 draft memorandum to be circulated in final form to the
25 SDCERS Board Trustees without disclosing their
26 involvement in the memorandum.

27 //

28 //

1 tt. On or about July 8, 2002, defendant LEXIN wrote a
2 memorandum to the City Council urging the City Council
3 to preapprove a motion to amend MP2 that an SDCERS
4 Board Trustee would make on July 11, 2002.

5 uu. On or about July 9, 2002, defendant GRISSOM forwarded
6 a document to defendant LEXIN titled "deal points
7 attached," which detailed outside counsel's concerns
8 over the City's MP2 proposal.

9 vv. On or about July 9, 2002, defendant LEXIN, in response
10 to the "deal points attached" document, sent an e-mail
11 to defendant GRISSOM stating, "WOW! I cannot tell you
12 how surprised and disappointed I am. . . I feel a
13 little led down a path . . . I deleted my first 2
14 responses to clean up my language. . . do you want
15 to call me or shall I have my attorney call your
16 attorney? Is someone trying to start a war?"

17 ww. On or about July 11, 2002, defendant WEBSTER told the
18 SDCERS Board Trustees that ratings agencies had
19 independently evaluated the City's fiscal health and
20 "put us at the top of the pack."

21 xx. On or about July 11, 2002, defendant SAATHOFF made a
22 motion before the SDCERS Board Trustees to amend the
23 City's version of MP2, which would allow the City to
24 avoid its imminent multi-million dollar balloon
25 payment under MP1.

26 yy. On or about July 11, 2002, defendants SAATHOFF, LEXIN,
27 and WEBSTER voted in favor and induced others SDCERS
28

1 Board Trustees to vote in favor of defendant
2 SAATHOFF's MP2 proposal.

3 zz. On or about July 11, 2002, defendant LEXIN sent an e-
4 mail to defendants GRISSOM and CHAPIN, and others,
5 stating "I want to acknowledge and thank each of you
6 for all the work you all did leading to today's
7 meeting."

8 aaa. On or about July 12, 2002, an SDCERS employee
9 coconspirator sent an e-mail to defendants LEXIN and
10 GRISSOM, and another stating that "Now that the Board
11 has acted on the Manager's Proposal, it appears the
12 process can begin to implement the changes in
13 retirement benefits negotiated at the recent Meet and
14 Confer sessions."

15 bbb. On or about July 18, 2002, defendants CHAPIN and
16 GRISSOM, and others, met to discuss how to implement
17 benefits conveyed under MP2, including defendant
18 SAATHOFF's presidential leave retirement benefit.

19 ccc. On or about August 19, 2002, defendant GRISSOM sent an
20 e-mail to defendant CHAPIN and others stating: "Have
21 you guys come up with any other research on the Lexin
22 conflict issue? My preliminary thought is a letter
23 from you setting forth the conflict to be delivered to
24 her."

25 ddd. On or about August 21, 2002, defendant CHAPIN sent an
26 e-mail to defendant GRISSOM and others recommending
27 changes to the MP2 Agreement, and also stated that
28 "[i]n light of the conflict of interest issues raised,

1 the proposal should be sent to [a Deputy City Manager]
2 with a brief explanation of the problems with
3 [defendant LEXIN] brokering the deal for the City and
4 then voting as a trustee."

5 eee. On or about August 26, 2002, defendants LEXIN, CHAPIN,
6 and GRISSOM, and others, met to discuss how to
7 implement benefits conveyed under MP2, including
8 defendant SAATHOFF's presidential leave retirement
9 benefit.

10 fff. On or about August 26, 2002, defendant CHAPIN sent an
11 e-mail to individuals, including defendant GRISSOM,
12 that forwarded a draft copy of MP2, provided
13 clarification about MP1, and stated "Feel free to call
14 me if you have any questions or need any additional
15 information."

16 ggg. On or about September 6, 2002, defendant CHAPIN
17 reviewed a draft of Resolution 297212 and sent an e-
18 mail to defendants LEXIN, WEBSTER, and GRISSOM
19 stating: "The Board has not reviewed the Presidential
20 Leave issue and does not have to," and recommended
21 that language requiring SDCERS Board approval of the
22 Presidential Leave Retirement Benefit be deleted from
23 Resolution 297212.

24 hhh. On or about September 13, 2002, defendant GRISSOM sent
25 an e-mail to defendant CHAPIN and others regarding a
26 draft of Resolution 297212, and asked, "Did you guys
27 get this? What do you think of it?"

28 //

1 iii. On or about September 13, 2002, defendant CHAPIN sent
2 an e-mail in response to defendant GRISSOM's September
3 13, 2002 e-mail stating: "Received the first one and
4 provided comments. . . . I have not reviewed this one
5 to see what changes made. I do have a copy."

6 jjj. On or about September 17, 2002, defendants GRISSOM and
7 CHAPIN met to discuss a draft of MP2.

8 kkk. On or about September 17, 2002, defendant CHAPIN sent
9 an e-mail to defendant GRISSOM and others stating that
10 she, defendant GRISSOM, and an SDCERS employee
11 coconspirator "just met to discuss the [MP2]
12 agreement. We agree the recommended change to the
13 table rates to show the full PUC rate in 2009 is
14 necessary."

15 lll. On or about September 27, 2002, defendant CHAPIN and
16 others met to discuss a draft of Resolution 297212.

17 mmm. On or about September 29, 2002, a coconspirator
18 deleted from the proposed changes to the San Diego
19 Municipal Code a reference to defendant SAATHOFF's
20 presidential leave retirement benefit.

21 nnn. On or about October 21, 2002, after the City Council
22 had approved Resolution 297212, defendant LEXIN sent
23 an e-mail to defendants GRISSOM, CHAPIN, and others
24 stating: "Thank you all for all the many, many hours
25 of work that went into accomplishing today [sic]
26 council actions. We're almost there. . . ."

27 ooo. On or about October 21, 2002, defendant LEXIN sent an
28 e-mail to a city labor negotiator stating: "Are you

1 going to take the lead in following up with Blum and
2 these 2 outstanding documents? You may have to work
3 through [defendant GRISSOM] or [defendant CHAPIN] to
4 get them, and I think Bruce is going to want to see
5 Bob's signature on a favorable opinion prior to the
6 2nd reading of today's ordinances."

7 ppp. On or about October 24, 2002, defendant LEXIN sent an
8 e-mail to a city labor negotiator stating: "as we've
9 discussed, [outside counsel] says he is concerned
10 about dealing directly with 'trustees.' Nonetheless,
11 you or elmer need to get [defendant GRISSOM] or [the
12 SDCERS Board President] to deal with [outside counsel]
13 on this issue."

14 qqq. On or about October 30, 2002, defendant GRISSOM, in
15 response to an e-mail from outside counsel stating
16 that "fyi [outside actuary] will sign" a letter re
17 MP2, sent an e-mail stating, "good."

18 rrr. On or about November 4, 2002, defendant CHAPIN sent an
19 e-mail to defendant GRISSOM and others about MP2,
20 stating: "Here are my comments."

21 sss. On or about November 5, 2002, defendant CHAPIN, after
22 receiving an e-mail stating from outside counsel that
23 the outside actuary "has promised that he will fax his
24 signed, final letter to [defendnt GRISSOM] Tuesday
25 morning. PLEASE CALL HIM TO REMIND HIM IF HIS LETTER
26 DOES NOT ARRIVE BY 9:30. as you know, he tends to get
27 a bit wiggly about this letter and we need him signed
28 and sealed. we can talk later about the choreography

1 of the board meeting," sent an e-mail stating, "Thanks
2 and will do."

3 ttt. On or about November 5, 2002, defendant WEBSTER sent
4 an e-mail to defendant LEXIN suggesting that they try
5 to convince the SDCERS Board Trustees to reduce the
6 MP1 82.3% trigger "BEFORE the actuary report comes out
7 with the ratio news."

8 uuu. On or about November 6, 2002, defendant WEBSTER
9 approved a Form 1472 concerning MP2 and SDCERS' Board
10 indemnification stating that: "On July 11, 2002, the
11 Board approved modifications to the Manager's
12 Proposal."

13 vvv. On or about November 15, 2002, defendants SAATHOFF and
14 WEBSTER, and others, voted in favor of defendant
15 SAATHOFF's MP2 proposal.

16 www. On or about November 18, 2002, defendants SAATHOFF and
17 LEXIN, and others defended MP2 before the City Council.

18 xxx. On or about December 6, 2002, defendant LEXIN, and
19 others, drafted a letter that defended MP2 against
20 public allegations that MP2 was "corrupt."

21 yyy. On or about December 16, 2002, defendant WEBSTER sent
22 an e-mail stating "CERS is going to have major
23 problems without added [sic] this future bomb to go
24 off 5-10-15 years from now."

25 zzz. On or about December 20, 2002, defendant SAATHOFF told
26 the SDCERS Board Trustees that under MP1, the City
27 would not have been required to pay SDCERS the funds
28

1 necessary to restore SDCERS' funding ratio to 82.3% if
2 funding ratio fell below 82.3%.

3 aaaa. On or about February 25, 2003, defendant LEXIN, after
4 receiving an e-mail stating that "I'm sure if Ron got
5 something in addition to the benefit improvement, he'd
6 take it - ugh!", sent an e-mail stating: "that sounds
7 like our Ron."

8 bbbb. On or about April 7, 2003, a coconspirator sent an e-
9 mail to defendant WEBSTER stating that MP1 was amended
10 "for a quid pro quo."

11 cccc. On or about August 15, 2003, defendant SAATHOFF,
12 during a SDCERS Board meeting, falsely denied that he
13 had received increased benefits as a result of MP2.

14 dddd. On or about September 7, 2003, defendant WEBSTER sent
15 an e-mail to defendant LEXIN and others stating that
16 she believed that, under MP1, if SDCERS' funding ratio
17 fell below 82.3%, the City was required to pay
18 sufficient funds to restore the funding ratio to
19 82.3%, "but wanted the Manager to speak for the City."

20 eeee. On or about October 17, 2003, defendant CHAPIN sent an
21 e-mail about defendant SAATHOFF's purchase of service
22 credit, and stated in the e-mail that the handling of
23 defendant SAATHOFF's purchase of service credit was
24 "appropriate" and "did not require Board approval."

25 ffff. On or about October 21, 2003, a coconspirator SDCERS
26 employee sent an e-mail stating that "Attached is Lori
27 Chapin's response to your questions regarding the
28 processing of Ron Saathoff's PSC contract. Based on

1 her opinion, we do not believe it is necessary to
2 change Ron's PSC nor bring the matter before the
3 Retirement Board."

4 gggg. On or about December 1, 2003, defendant SAATHOFF
5 signed his Presidential Retirement Agreement.

6 hhhh. On or about January 5, 2004, a coconspirator SDCERS
7 employee reiterated that the issue concerning
8 defendant SAATHOFF's presidential leave retirement
9 benefit and purchase of service credits "is not
10 necessary to be presented to the Board as an audit
11 exception."

12 iiii. On or about May 17, 2004, defendant WEBSTER falsely
13 stated that she was not aware of the exception to the
14 90% cap proposal until it was a "done deal."

15 jjjj. On or about February 16, 2005, defendant GRISSOM
16 falsely stated that he had no understanding in advance
17 that defendant SAATHOFF would make his July 11, 2002
18 motion to amend the City's MP2 proposal.

19 kkkk. On or about April 22, 2005, defendant CHAPIN falsely
20 stated that she was not involved in the drafting of
21 MP2, that outside counsel had worked on MP2
22 "exclusively," and that outside counsel had not sought
23 advice or guidance from defendant CHAPIN about MP2.

24 llll. On or about April 22, 2005, defendant CHAPIN falsely
25 stated that she did not do anything with respect to
26 resolution 297212.

27 //

28 //

1 mmmm. On or about November 1, 2005, defendant CHAPIN falsely
2 stated that she was not involved in MP2 and was
3 "recused" from MP2.

4 All in violation of Title 18, United States Code, Section 371.

5 Counts 2 - 5

6 18 U.S.C. §§ 1343, 1346, and 2

7 Honest Services Wire Fraud

8 29. The allegations set forth in paragraphs 1 through 24 above
9 are realleged as if fully set forth herein.

10 30. Beginning in or before January 2001, and continuing up to
11 and including January 6, 2006, within the Southern District of
12 California, and elsewhere, defendants SAATHOFF, LEXIN, WEBSTER,
13 GRISSOM, and CHAPIN did knowingly devise and intend to devise a
14 material scheme and artifice to defraud, to wit, to act with the
15 intent to deprive the SDCERS Board Trustees, members of SDCERS, and
16 the citizens of the City of San Diego of their intangible right of
17 honest services of their public officials to be performed free from
18 corruption, fraud, undue influence, conflict of interest, and deceit.

19 The Scheme to Defraud

20 31. It was part of the scheme to defraud that defendants
21 SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others, did, among
22 other things, the following:

23 a. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and
24 CHAPIN, and others, fraudulently devised a plan to modify MP1 and its
25 trigger in sufficient time so the City would avoid making the imminent
26 multi-million dollar balloon payment to SDCERS that MP1 required.

27 b. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and
28 CHAPIN, and others, fraudulently agreed to obtain the presidential

1 leave retirement benefit for defendant SAATHOFF in exchange for his
2 support of a proposal to modify MP1 so the City would avoid the
3 imminent multi-million dollar balloon payment that it owed SDCERS
4 under MP1.

5 c. Defendants SAATHOFF, LEXIN, and WEBSTER, and others,
6 negotiated and agreed to accept increased retirement benefits,
7 including defendant SAATHOFF's requested presidential leave retirement
8 benefit and the increase in the retirement multiplier from 2.25% to
9 2.5% for general members, in exchange for their support of a proposal
10 to modify MP1 so the City would avoid the multi-million dollar balloon
11 payment that it owed SDCERS under MP1.

12 d. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and
13 CHAPIN, and others, fraudulently concealed material information about
14 the increased retirement benefits, including defendant SAATHOFF's
15 presidential leave retirement benefit, from SDCERS Board Trustees, so
16 that the other SDCERS Board Trustees would vote to approve the
17 modification of MP1, which would allow the City to avoid the imminent
18 multi-million dollar balloon payment that it owed SDCERS, would allow
19 the defendants and others to receive increased retirement benefits,
20 including defendant SAATHOFF's presidential leave retirement benefit,
21 and would allow defendants LEXIN, WEBSTER, GRISSOM, and CHAPIN to
22 maintain their positions with the City and SDCERS.

23 e. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and
24 CHAPIN, and others, fraudulently concealed material information
25 concerning MP2 and other proposals from SDCERS Board Trustees, so that
26 the other SDCERS Board Trustees would vote to approve the modification
27 of MP1, which would allow the City to avoid the imminent multi-million
28 dollar balloon payment that it owed SDCERS, would allow the defendants

1 and others to receive increased retirement benefits, including
2 defendant SAATHOFF's presidential leave retirement benefit, and would
3 allow defendants LEXIN, WEBSTER, GRISSOM, and CHAPIN to maintain their
4 positions with the City and SDCERS.

5 f. Defendants SAATHOFF, LEXIN, and GRISSOM, and others,
6 fraudulently concealed from the SDCERS Board Trustees a prearranged
7 plan for defendant SAATHOFF to submit his MP2 proposal, which, if
8 approved, guaranteed defendant SAATHOFF his presidential leave
9 retirement benefit.

10 g. Defendants SAATHOFF, LEXIN, and WEBSTER, and others,
11 fraudulently voted in favor of defendant SAATHOFF's MP2 proposal, and
12 by concealing material information from the other SDCERS Board
13 Trustees, defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN
14 deceived and fraudulently induced the other SDCERS Board Trustees to
15 vote in favor of defendant SAATHOFF's MP2 proposal, which would allow
16 the City to avoid the imminent multi-million dollar balloon payment
17 that it owed SDCERS, would allow the defendants and others to receive
18 increased retirement benefits, including defendant SAATHOFF's
19 presidential leave retirement benefit, and would allow defendants
20 LEXIN, WEBSTER, GRISSOM, and CHAPIN to maintain their positions with
21 the City and SDCERS.

22 h. Defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and
23 CHAPIN, and others, drafted and assisted in the drafting of
24 legislation implementing defendant SAATHOFF's MP2 proposal and the
25 contingent retirement benefits negotiated in 2002, knowing that
26 defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, and others
27 had concealed material information from the SDCERS Board Trustees,
28

1 including the nature and existence of the presidential leave
2 retirement benefit.

3 i. Defendants SAATHOFF, GRISSOM, and CHAPIN, and others,
4 fraudulently concealed from SDCERS Board Trustees material information
5 concerning defendant SAATHOFF's purchase of service credits that
6 enhanced defendant SAATHOFF's retirement benefits.

7 j. By deceiving the SDCERS Board Trustees and fraudulently
8 concealing material information from SDCERS Board Trustees, defendants
9 SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN caused significant harm
10 to the financial integrity of SDCERS.

11 Execution Of The Scheme

12 32. On or about the dates set forth below, according to each
13 count, within the Southern District of California, and elsewhere,
14 defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, for the
15 purpose of executing the aforesaid material scheme to defraud,
16 knowingly transmitted and caused to be transmitted by means of a wire
17 communication in interstate commerce, certain writings, signs,
18 signals, and sounds, that is, e-mails, as alleged below:

19	<u>COUNT</u>	<u>DATE</u>	<u>WIRE COMMUNICATION</u>
20	2	6/19/2002	E-mail entitled "Fwd: Report," sent from an e-mail account located in San Diego, California,
21			to an America Online e-mail account of an SDCERS Board Trustee, located in Dulles, Virginia
22	3	7/8/2002	E-mail entitled "City's Proposal re SDCERS,"
23			sent from an e-mail account located in San Diego, California, to an America Online e-mail
24			account of an SDCERS Board Trustee, located in Dulles, Virginia
25	4	7/15/2002	E-mail entitled "Re: He's Baaack!," sent by
26			defendant GRISSOM from an e-mail account located in San Diego, California, to an America Online
27			e-mail account of an SDCERS Board Trustee, located in Dulles, Virginia
28			

1 5 10/4/2002 E-mail entitled "Resolution for Incumbent
Presidential Retirement Benefits," sent from an
2 e-mail account located in San Diego, California,
to an America Online e-mail account of defendant
3 SAATHOFF, located in Dulles, Virginia

4 All in violation of Title 18, United States Code, Sections 1343, 1346
5 and 2.

6 Counts 6 - 20

7 | 18 U.S.C. §§ 1341, 1346, and 2

8 Honest Services Mail Fraud

9 33. The allegations set forth in paragraphs 1 through 24 and
10 31 above are realleged as if fully set forth herein.

34. Beginning in or before January 2001, and continuing up to and including January 6, 2006, within the Southern District of California, and elsewhere, defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN did knowingly devise and intend to devise a material scheme and artifice to defraud, to wit, to act with the intent to deprive the SDCERS Board Trustees, members of SDCERS, and the citizens of the City of San Diego of their intangible right of honest services of their public officials to be performed free from corruption, fraud, undue influence, conflict of interest, and deceit.

20 Execution Of The Scheme

21 35. On or about the dates set forth below, according to each
22 count, within the Southern District of California, and elsewhere,
23 defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, for the
24 purpose of executing the aforesaid material scheme to defraud,
25 knowingly deposited and caused to be deposited matters and things to
26 be sent and delivered by private and commercial interstate carriers,
27 and caused matters and things to be delivered by the United States

Postal Service and private and commercial interstate carriers according to the direction thereon as alleged below:

COUNT	DEFENDANTS	DATE	MAIL MATTER
6	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	6/13/2002	SDCERS Board Packet for June 21, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Rhodes via Adcom Express
7	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	6/13/2002	SDCERS Board Packet for June 21, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Shipione via Adcom Express
8	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	6/13/2002	SDCERS Board Packet for June 21, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Vortmann via Adcom Express
9	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	7/9/2002	SDCERS Board Packet for July 11, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Crow via Adcom Express
10	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	7/9/2002	SDCERS Board Packet for July 11, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Shipione via Adcom Express
11	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	7/9/2002	SDCERS Board Packet for July 11, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Vortmann via Adcom Express
12	SAATHOFF	8/12/2002	Check No. 013011081 for \$3,529.89, payable to San Deigo [sic] City Employees Ret Sys FBO Ronald L Saathoff, Delivered to SDCERS via United States Mail
13	SAATHOFF	8/12/2002	Check No. 013010714 for \$8,090.44, payable to San Deigo [sic] City Employees Ret Sys FBO Ronald L Saathoff, Delivered to SDCERS via United States Mail

COUNT	DEFENDANTS	DATE	MAIL MATTER
14	SAATHOFF	8/29/2002	Check No. 78697 for \$1,736.71, payable to SDCERS PLAN, Delivered to SDCERS via United States Mail
15	SAATHOFF	9/13/2002	Check No. 2583879 for \$51,236.79, payable to City of San Diego For Plan to Plan Transfer FBO Ronald Saathoff, Delivered to SDCERS via United States Mail
16	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	11/7/2002	SDCERS Board Packet for November 15, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Crow via Adcom Express
17	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	11/7/2002	SDCERS Board Packet for November 15, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Garnica via Adcom Express
18	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	11/7/2002	SDCERS Board Packet for November 15, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Rhodes via Adcom Express
19	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	11/7/2002	SDCERS Board Packet for November 15, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Shipione via Adcom Express
20	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	11/7/2002	SDCERS Board Packet for November 15, 2002 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Vortmann via Adcom Express

All in violation of Title 18, United States Code, Sections 1341, 1346 and 2.

//

//

//

//

//

Counts 21 - 3018 U.S.C. §§ 1341, 1346, and 2Mail Fraud

36. The allegations set forth in paragraphs 1 through 24 are realleged as if fully set forth herein.

37. Beginning in or before January 2001, and continuing up to and including January 6, 2006, within the Southern District of California, and elsewhere, defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN did knowingly devise and intend to devise a material scheme and artifice to defraud, including to deprive the SDCERS Board Trustees, members of SDCERS, and the citizens of the City of San Diego of their intangible right of honest services of their public officials to be performed free from corruption, fraud, undue influence, conflict of interest, and deceit, and, with the intent to defraud, to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and the intentional concealment, failure to disclose, and omission of material facts.

The Scheme to Defraud

38. The allegations set forth in subparagraphs 27a through 27k are realleged as if fully set forth herein.

Execution Of The Scheme

39. On or about the dates set forth below, according to each count, within the Southern District of California, and elsewhere, defendants SAATHOFF, LEXIN, WEBSTER, GRISSOM, and CHAPIN, for the purpose of executing the aforesaid material scheme to defraud, with the intent to defraud, knowingly deposited and caused to be deposited matters and things to be sent and delivered by private and commercial

Case 3:00-cv-00043-DEN Document 4-10 Filed 10/17/2008 Page 10 of 11

1 interstate carriers, and caused matters and things to be delivered
2 by private and commercial interstate carriers according to the
3 direction thereon as alleged below:

COUNT	DEFENDANTS	DATE	MAIL MATTER
21	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	11/14/2003	SDCERS Board Packet for November 21, 2003 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Garnica via Adcom Express
22	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	11/14/2003	SDCERS Board Packet for November 21, 2003 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Vortmann via Adcom Express
23	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	11/14/2003	SDCERS Board Packet for November 21, 2003 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Shipione via Adcom Express
24	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	11/14/2003	SDCERS Board Packet for November 21, 2003 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Crow via Adcom Express
25	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	11/14/2003	SDCERS Board Packet for November 21, 2003 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Hogquist via Adcom Express
26	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	12/11/2003	SDCERS Board Packet for December 19, 2003 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Garnica via Adcom Express
27	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	12/11/2003	SDCERS Board Packet for December 19, 2003 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Vortmann via Adcom Express
28	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	12/11/2003	SDCERS Board Packet for December 19, 2003 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Shipione via Adcom Express

COUNT	DEFENDANTS	DATE	MAIL MATTER
29	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	12/11/2003	SDCERS Board Packet for December 19, 2003 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Crow via Adcom Express
30	SAATHOFF LEXIN WEBSTER GRISSOM CHAPIN	12/11/2003	SDCERS Board Packet for December 19, 2003 SDCERS Board Meeting, Delivered to SDCERS Board Trustee Hogquist via Adcom Express

DATED: October 14, 2008.

A TRUE BILL:

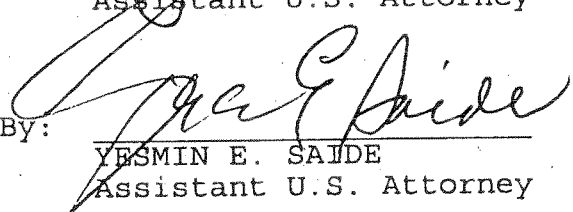

Foreperson

KAREN P. HEWITT
United States Attorney

By:


JOHN B. OWENS
Assistant U.S. Attorney

By:


YESMIN E. SAIDE
Assistant U.S. Attorney